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TOYOTA MOTOR SALES, U.S.A., INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK R. CIABATTARI, and all
other persons similarly situated,

Plaintiffs,

v.

TOYOTA MOTOR SALES, U.S.A.,
INC., a California corporation;
GOODYEAR DUNLOP TIRES
NORTH AMERICA, LTD., LLC, an
Ohio limited liability corporation;
and DOES 1-30,

Defendants.

Case No. C05-04289 SC

**STIPULATED PROTECTIVE
ORDER**

Dept: 1
Judge: Honorable Samuel Conti

Subject to the approval of this Court and the provisions of Rule 26 of the Federal Rules of Civil Procedure, plaintiff Mark R. Ciabattari, defendant Toyota Motor Sales, U.S.A., Inc., and defendant Goodyear Dunlop Tires North America, Ltd., LLC, (collectively, the "Parties") by and through their respective counsel of record, hereby stipulate and agree that, with respect to any information, documents, or things obtained by any Party to these actions during settlement negotiations or in response to any discovery the following Stipulated Protective Order shall govern:

1. PURPOSE AND LIMITATIONS

The purpose of this Stipulated Protective Order is to allow the Parties

1 to have reasonable access to sensitive commercial, financial, and confidential
2 information from other Parties while protecting the confidentiality or privacy of that
3 information. The Parties acknowledge that this Stipulated Protective Order does
4 not confer blanket protections on all disclosures or responses to discovery and that
5 the protection it affords to Discovery Materials (defined below) extends only to the
6 limited information or items that are entitled under the applicable legal principles to
7 treatment as confidential. The Parties further acknowledge, as set forth in Section
8 10, below, that this Stipulated Protective Order creates no entitlement to file
9 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
10 that must be followed and reflects the standards that will be applied when a Party
11 seeks permission from the Court to file material under seal.

12 **2. DEFINITIONS**

13 2.1 Party/Parties. “Party” or “Parties” means Mark R. Ciabattari,
14 Toyota Motor Sales, U.S.A., Inc., and Goodyear Dunlop Tires North America, Ltd.,
15 LLC, including all of their officers, directors, employees, consultants, retained
16 experts, agents, and outside counsel (and their support staff). This definition may
17 be modified if and when a plaintiff’s class is certified by the Court, or upon the
18 agreement of the original parties to this Stipulated Protective Order.

19 2.2 Discovery Material. “Discovery Material” means any
20 information, document, or tangible thing, upon which any expression,
21 communication, or representation has been recorded by any means, or response to
22 any discovery request, including by way of example, document requests,
23 interrogatories, requests for admissions, notices of deposition, requests to inspect,
24 initial disclosures, subpoenas and any other similar materials, or portions thereof.

25 2.3 Settlement Materials: “Settlement Materials” means any
26 information, document or tangible thing provided to the Receiving Party for the
27 purposes of settlement negotiations.
28

1 2.4 Confidential Information. “Confidential Information” means
2 any (1) Settlement Materials or (2) Discovery Materials Producing Party designates
3 as sensitive or proprietary business or financial information, personal information,
4 or information furnished to it in confidence by any third party, which information is
5 not known to the general public.

6 2.5 Receiving Party. “Receiving Party” means a Party to the action
7 or any third party who receives Discovery Material or Settlement Material from a
8 Producing Party.

9 2.6 Producing Party. “Producing Party” means a Party to the action
10 or any third party who produces or otherwise makes available Discovery Material
11 or Settlement Material to a Receiving Party.

12 2.7 Designating Party. “Designating Party” means a Party to the
13 action or any third party who provides Settlement Materials to one or more Parties
14 or third parties or who produces Discovery Materials that it designates as
15 “Confidential Information.”

16 2.8 Counsel. “Counsel” means counsel of record, an employee in-
17 house counsel of a Party, and their secretarial and support personnel and other
18 assistants to whom it is necessary to disclose Confidential Information for the
19 purpose of this action.

20 2.9 Expert. “Expert” means a person with specialized knowledge or
21 experience in a matter pertinent to the litigation who has been retained by one Party
22 or its Counsel to serve as an expert witness or as a consultant in this action and who
23 for the purposes of any settlement discussions and review of Settlement Materials,
24 is not or has not been employed by or been a consultant to in the last 7 years
25 another Party or of a competitor of another Party and who, at the time of retention,
26 is not anticipated to become an employee of another Party or a competitor of
27 another Party. For purposes related to this litigation other than settlement, the
28 Parties agree to meet and confer about issues related to a Party’s Expert’s past

1 employment or consultant work with another Party or a competitor of another
 2 Party. If these issues cannot be cannot be resolved informally, either Party may
 3 move the Court to resolve the dispute. Until such time as these issues are resolved,
 4 the Parties agree not to disclose Confidential Information to an Expert who was a
 5 former or is a current employee or consultant of another Party or a competitor of
 6 another Party.

7 2.10 Trial Preparation Materials. “Trial Preparation Materials”
 8 means documents and materials such as pleadings, court papers and briefs, exhibits,
 9 depositions, interrogatories, and the like, and summaries thereof or notes pertaining
 10 thereto.

11 2.11 Other Plaintiffs: “Other Plaintiffs” means the named plaintiffs,
 12 and their heirs, successors, and assigns, and their attorneys in the following
 13 lawsuits:

14 a. *Stanley Monk v. Toyota Motor Sales, U.S.A. Inc., et al.*
 15 (05CV10562, USDC, So. Dist. N.Y.)

16 b. *Jess Collinson, Scott M. Pollack and Thomas Hunt v.*
 17 *Toyota Motor Sales, U.S.A., Inc., et al.* (05CV05471, USDC, Dist. N.J.)

18 c. *Kyle Bressler v. Toyota Motor Sales, U.S.A., Inc. et al.*
 19 (05CV544, USDC, Mid. Dist. FL.))

20 d. *Patricia and Michael Beaird v. Toyota Motor Sales,*
 21 *U.S.A., Inc., et al.,* (05CH22370, Circuit Court of Cook County)

22 e. *Thomas F. Pear v. Toyota Motor Sales, U.S.A., Inc. et al.,*
 23 (05CV01778, USDC, Dist. CT.)

24 **3. SCOPE**

25 The protection conferred by this Stipulated Protective Order covers not
 26 only Confidential Information, but also any information copied or extracted
 27 therefrom, as well as copies, excerpts, summaries, or compilations thereof, plus
 28

1 testimony, conversations, or presentations by Parties or Counsel to or in Court or in
2 other settings that might reveal Confidential Information.

3 **4. DESIGNATION OF CONFIDENTIAL INFORMATION**

4 4.1 Designation in General. Any Party or non-party may designate
5 as “CONFIDENTIAL,” by so marking any Discovery Material– and any copies,
6 abstracts, excerpts or analyses thereof – given, used, served or produced by the
7 Party or non-party in connection with this action, including without limitation in
8 response to formal discovery demands or subpoenas or in compliance with the
9 initial disclosure requirements prescribed by Federal Rules of Civil Procedure, Rule
10 26(a), that the Designating Party or non-party in good faith believes to contain,
11 reflect, regard, or disclose any confidential, non-public, or proprietary business or
12 financial information. Further, any Party or non-party may designate as
13 “SETTLEMENT/CONFIDENTIAL,” by so marking any Settlement Material – and
14 any copies, abstracts, excerpts or analyses thereof – given, used, served or produced
15 by the Party or non-party for the purposes of settlement negotiations. All materials
16 designated as “CONFIDENTIAL” or “SETTLEMENT/CONFIDENTIAL” shall be
17 referred to in this Stipulated Protective Order as Confidential Information.

18 4.2 Inadvertent Failure to Designate. A Party or non-party that
19 inadvertently fails to mark an item as Confidential Information at the time it is
20 given, used, served or produced may correct its failure in writing, accompanied by
21 substitute copies of each item, container or folder, appropriately marked as
22 Confidential Information. Failure to designate is not a waiver of the confidential
23 nature of the material.

24 4.3 Settlement Negotiations. All documents provided to any Party
25 in connection with any settlement negotiations, whether marked so or not, are
26 Confidential Information and all copies must be returned to the Designating Party
27 immediately upon request. The Receiving Party agrees not to challenge the
28 confidential designation of any Settlement Materials. Further, the Parties agree that

1 all discussions about and information exchanged in connection with settlement
2 negotiations shall be kept strictly confidential, including but not limited to the fact
3 that such settlement negotiations are about to or have occurred.

4 **5. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 5.1 Meet and Confer. Except as provided in 4.3, the acceptance by
6 a Receiving Party of Confidential Information shall not constitute an admission or
7 concession or permit an inference that the Confidential Information is, in fact,
8 confidential. Should a Receiving Party object in good faith to such designation,
9 that Party must notify the Designating Party or Parties in writing of such objection,
10 specifying the basis thereof. The Parties shall then negotiate in good faith to
11 attempt to resolve their dispute regarding the confidentiality of the subject
12 materials. In conferring, the Receiving Party must explain the basis for its belief
13 that the confidentiality designation was not proper and must give the Designating
14 Party an opportunity to review the designated material and to explain the basis for
15 the designation.

16 5.2 Judicial Intervention. Should such meet-and-confer efforts fail,
17 the Designating Party may then apply to the Court for a protective order covering
18 the designated information within twenty (20) days from the receipt of such written
19 notice from the Receiving Party. Or the Receiving Party may file and serve a
20 motion under Civil Local Rule 7 that identifies the challenged material and sets
21 forth in detail the basis for the challenge. Each such motion must be accompanied
22 by a competent declaration that affirms that the movant has complied with the meet
23 and confer requirements and that sets forth with specificity the justification for the
24 designation provided by the Designating Party. The Designating Party shall bear
25 the burden of establishing the confidentiality of any material (except for Settlement
26 Materials as provided *supra* ¶ 4.3 which is deemed confidential) designated as
27 Confidential Information. The information which is the subject of such dispute
28 shall continue to be treated as confidential subject to this Stipulated Protective

1 Order for a period of twenty (20) court days following written notice of objection
2 unless a motion for a protective order is filed within that time, in which case the
3 information shall be treated as confidential pending the outcome of such motion. In
4 the absence of such a motion, the documents or information shall not be treated as
5 confidential upon the expiration of twenty (20) court days after written notice of
6 objection.

7 **6. USE OF CONFIDENTIAL MATERIAL**

8 6.1 General. No Confidential Information shall be made public by
9 the Receiving Party or divulged to anyone other than as set forth herein. Absent a
10 specific order by the Court or if the Designating Party otherwise agrees, once
11 designated as Confidential Information, such materials and information shall be
12 used by the Parties solely in connection with this litigation, and not for any other
13 purpose, including any business, competitive, or governmental purpose or function.

14 6.2 Maintenance. Confidential Information shall be held in custody
15 and confidence by Counsel of the Receiving Party. Confidential Information
16 (except for Trial Preparation Material, but including Confidential Information that
17 is attached to Trial Preparation Material as exhibits, appendices, and the like) shall
18 be maintained by each person Receiving it, when not in actual use, in a secure
19 location inaccessible to any person not authorized by this Stipulated Protective
20 Order to use such Confidential Information.

21 6.3 Advice of Counsel. Nothing under this Stipulated Protective
22 Order shall bar or otherwise restrict Counsel from rendering advice to a Party with
23 respect to this action, and in the course thereof, relying in a general way upon
24 examination of any Confidential Information. However, in rendering such advice
25 and in otherwise communicating with a Party, such Counsel shall not disclose the
26 contents of any Confidential Information contrary to the terms or intent of this
27 Protective Order.

28 6.4 Right to Disclose. Nothing in this Stipulated Protective Order

shall preclude any person or entity from disclosing or using, in any manner or for any purpose, any information or document if that information or document is lawfully obtained from a third party under no obligations of confidentiality with respect thereto and having the right to disclose such information. Similarly, the terms of this Stipulated Protective Order shall in no way affect a Party's right to reveal or disclose to anyone any information designated by that Party itself as CONFIDENTIAL INFORMATION. Nothing herein shall prohibit a Party from disclosing CONFIDENTIAL INFORMATION to the person the document identifies as the author, addressee or recipient of such material.

7. ACCESS TO CONFIDENTIAL INFORMATION

7.1 Permissible Disclosures. Confidential Information shall be treated by each Receiving Party as confidential unless and until the Court rules to the contrary or the Designating Party agrees otherwise. Unless and until the Court rules or the Designating Party otherwise agrees, and except as set forth in Paragraph 7.2 herein, access to or disclosure of Confidential Information shall be limited to the following persons and the following persons are bound by the terms of this Stipulated Protective Order, subject to the qualification provisions of Paragraph 7.2 herein:

a. The Court and those employed by the Court, in which event such information shall be filed under seal (and kept under seal until further order of the Court);

b. Each of the named Parties to the litigation who has, through that Party's respective Counsel, signed this Stipulated Protective Order (or who has accepted the terms of this Stipulated Protective Order by the Party's counsel's execution of Appendix A hereto), including any representative of the Party (officers, directors, partners, employees) assisting in the prosecution or the defense of the litigation, and such Party's counsel, including the clerical, secretarial, and paralegal staff employed by such

1 counsel;

2 c. Other Plaintiffs provided, however, that in all such cases, before
3 disclosure, the Other Plaintiffs' lawyers to whom disclosure is made must
4 signify assent to the terms of this Stipulated Protective Order, on behalf of
5 their clients as well as themselves, by executing the acknowledgement
6 attached as Appendix A hereto, indicating that he or she has read and
7 understands this Stipulated Protective Order and has agreed to be bound by
8 its terms.

9 d. Court reporters and employees of court reporters engaged by
10 counsel to record and transcribe testimony in this litigation, and translators
11 engaged for any purpose in the litigation;

12 e. Experts retained for the purpose of assisting counsel in the
13 litigation to the extent reasonably necessary for the litigation of this action;
14 provided, however, that in all such cases the person to whom disclosure is
15 made must signify assent to the terms of this Stipulated Protective Order by
16 executing the acknowledgement attached as Appendix A hereto, indicating
17 that he or she has read and understands this Stipulated Protective Order and
18 has agreed to be bound by its terms; and

19 f. Persons from whom testimony is taken or is to be taken in the
20 litigation, either in a deposition or at trial, provided that Confidential
21 Information may be disclosed to such persons only in the preparation for,
22 review of, or in the course of his or her testimony, and that such person shall
23 not retain such Confidential Information after his or her testimony is
24 concluded; provided, however, that in all such cases the person to whom
25 disclosure is made must signify assent to the terms of this Stipulated
26 Protective Order by executing the acknowledgement attached as Appendix A
27 hereto, indicating that he or she has read and understood this Stipulated
28 Protective Order and has agreed to be bound by its terms.

1 7.2 Other Persons. Counsel desiring to qualify a person or persons
2 to receive Confidential Information under paragraph 7.1(c), (d), (e) or (f) shall first
3 obtain from each such person a signed undertaking in the form of Appendix A
4 hereto.

5 7.3 Additional Parties. In the event that additional persons become
6 parties to this action, they shall not have access to Confidential Information
7 produced by or obtained from any Party or nonparty until the newly joined party or
8 his or her counsel executes the acknowledgment attached as Appendix A hereto,
9 indicating to all other Parties that he or she has read this Stipulated Protective Order
10 and agrees to be bound by its terms.

11 7.4 Disclosure Pursuant to Subpoena. Should any non-party serve a
12 subpoena calling for the production of any Confidential Information on any Party or
13 Counsel for a Party who has received such information, the subpoenaed Party in
14 such instance shall provide notice in writing via facsimile to the Designating Party
15 immediately and in no event more than three days after Receiving the subpoena.
16 Such notification must include a copy of the subpoena. It shall be the obligation of
17 the Designating Party, prior to the response date on the subpoena, to seek a
18 protective order or any other appropriate relief from the Court if the Designating
19 Party wishes to maintain the confidentiality of the material. A Designating Party
20 that fails to seek judicial relief to preclude the disclosure of any Confidential
21 Information in response to a subpoena shall be deemed to have waived any claim of
22 confidentiality with respect to such material.

23 7.5 Objection to Disclosure to Other Persons. Should any Party
24 seek to disclose Confidential Information to such other persons not authorized to
25 receive Confidential Information pursuant to paragraph 7(a-f), said Party shall
26 identify in a written notice to the Designating Party (1) the specific Confidential
27 Information; (2) the purpose of such disclosure; (3) the person(s) to receive the
28 Confidential Information, by name, address and telephone number; (4) counsel for

1 that person(s), by name address and telephone number; and (4) any litigation,
2 administrative proceeding or proceeding, by caption and docket number. This
3 written notice will be provided at least sixty (60) days in advance of the intended
4 date of disclosure. The Designating Party in such instance shall provide any
5 objection to such disclosure in written notice to the other Party within thirty (30)
6 days after receipt of that Party's intent to disclose. No Confidential Information
7 shall be disclosed to that person(s) until the validity of the objection has been
8 resolved, either by an agreement between the Parties or by order of the Court. If no
9 objection is made by the Designating Party, then the identified Confidential
10 Information may be divulged by the Receiving Party to the identified person upon
11 his or her execution of the acknowledgement attached as Appendix A hereto,
12 indicating that he or she has read and understood this Stipulated Protective Order
13 and has agreed to be bound by its terms.

14 **8. ACKNOWLEDGEMENT OF PROTECTIVE ORDER**

15 Before obtaining access to any CONFIDENTIAL INFORMATION
16 covered by this Stipulated Protective Order, each person (other than Counsel) who
17 is permitted to have access to CONFIDENTIAL INFORMATION under this
18 Stipulated Protective Order must signify assent to the terms of this Stipulated
19 Protective Order by executing the acknowledgement attached as Appendix A
20 hereto, indicating that he or she has read and understands this Protective Order and
21 agrees to be bound by its terms. If a deponent or the attorney for a deponent refuses
22 to execute the acknowledgement attached as Appendix A hereto, he or she shall be
23 requested on the deposition record to agree to the terms of this Stipulated Protective
24 Order. Every deposition witness whose appearance at deposition is obtained
25 pursuant to the process of this Court and to whom CONFIDENTIAL
26 INFORMATION is disclosed at deposition is hereby ordered (1) to maintain all
27 CONFIDENTIAL INFORMATION in confidence, and (2) not to disclose
28 CONFIDENTIAL INFORMATION to anyone other than in accordance with the

1 terms of this Stipulated Protective Order.

2 **9. HANDLING OF CONFIDENTIAL INFORMATION**

3 9.1 Deposition Transcripts. In the case of depositions and pretrial
 4 proceedings, the Parties agree to provisionally treat the entire transcript of the
 5 deposition or pretrial proceeding as Confidential Information. Within thirty (30)
 6 days of receipt of the transcript, any Counsel may designate portions of the
 7 transcript as Confidential Information by informing the reporter and other Counsel
 8 in writing of such designations by page and line number. The reporter, who shall
 9 first have agreed to abide by the terms of this Stipulated Protective Order, shall be
 10 instructed to seal the transcript and include on the cover page the legend: "This
 11 transcript portion contains information subject to a Protective Order and shall be
 12 used only in accordance therewith."

13 9.2 Exclusion of Unauthorized Persons. When testimony
 14 designated as Confidential Information is (or is sought to be) elicited during a
 15 deposition or pretrial proceeding, persons not entitled to receive such information
 16 under the terms of this Stipulated Protective Order shall be excluded from
 17 attendance at the deposition or pretrial proceeding of this action during such time as
 18 the Confidential Information is being disclosed, unless the Parties otherwise agree
 19 or the Court otherwise orders.

20 9.3 Inadvertent Production. If during document production, the
 21 Producing Party inadvertently produces a document entitled to protection under the
 22 attorney-client privilege, the attorney work product doctrine, or other provisions of
 23 applicable law: (a) the Parties agree that the erroneous or inadvertent production
 24 shall not constitute a waiver of such protection as to either the subject matter of the
 25 material or as to related documents or communications; and (b) the Producing Party
 26 may request the return of the inadvertently produced document at any time before
 27 the commencement of trial, but no more than thirty (30) days after the document is
 28 first marked as a deposition exhibit, identified as a potential trial exhibit, or

otherwise identified by any Party in any pleading or correspondence served on all Parties to this action. Any such request shall be made in writing, and shall identify the basis for the claimed protection. If the Party (or Parties) that received the inadvertently produced document agrees that the document is entitled to protection (without regard to its inadvertent production), all copies of the inadvertently produced document shall be returned to the producing Party or destroyed, and no reference to such document shall be made in discovery, at trial, or any other manner. If the Parties do not agree that the document is entitled to protection, the burden is on the producing Party to file an appropriate motion with the Court within forty-five (45) days after the document is first marked as a deposition exhibit, identified as a potential trial exhibit, or otherwise identified by any Party in any pleading or correspondence served on all Parties to this action. Further, the Parties agree that *in camera* review of such documents or testimony is not a waiver of privilege.

9.4 Unauthorized Disclosure. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Confidential Information to any persons or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Confidential Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the acknowledgment attached as Appendix A hereto.

10. FILING CONFIDENTIAL INFORMATION

Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Confidential Information. A Party that seeks to file under seal any Confidential Information must comply with Civil Local Rule 79-5.

1 **11. FINAL DISPOSITION**

2 11.1 Termination of Participation in Action. Once participation in
3 this action by any person obtaining Confidential Information has been terminated or
4 otherwise concluded, all Confidential Information in the possession of such person
5 shall be returned by such person within thirty (30) calendar days to the Counsel
6 from whom he or she obtained such Confidential Information.

7 11.2 Termination of Action. Within sixty (60) days after the final
8 termination of this action, counsel for the Receiving Party shall return all copies of
9 the Confidential Information to counsel for the Designating Party, or shall, at the
10 option of the Designating Party, destroy such Confidential Information, and certify
11 in writing that said destruction has occurred to counsel for the Designating Party.

12 **12. RIGHT TO FURTHER RELIEF - NO WAIVER**

13 12.1 Right to Further Relief. This Stipulated Protective Order shall
14 not prevent a Party from applying to the Court for relief from this Order or any of
15 its terms or provisions, or from applying to the Court for further or additional
16 protective orders.

17 12.2 Right to Assert Other Objections. Nothing in this Stipulated
18 Protective Order shall be construed as a waiver of the right of any Party to object to
19 the taking or admissibility of any testimony, the production of documents or
20 tangible things, or the admissibility of other evidence where such an objection is
21 based on a ground or grounds other than that the testimony or evidence involves
22 CONFIDENTIAL INFORMATION.

23 12.3 No Waiver Due to Review. Review of Confidential Information
24 by Counsel or Experts shall not waive the confidentiality of the documents or
25 objections to production.

26 **13. EFFECTIVE PERIOD**

27 The terms of this Stipulated Protective Order shall be effective and
28 binding upon a Party upon the signature of its Counsel below. The restrictions on

1 use of Confidential Information set forth in this Stipulated Protective Order shall
2 survive the conclusion of this litigation and, after conclusion of this litigation, the
3 Court shall exercise limited jurisdiction for the purpose of enforcing this Stipulated
4 Protective Order.

5
6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 Dated: March 1, 2006

8 _____/s/
9 Thomas M. Riordan
10 Attorneys for Defendant
11 TOYOTA MOTOR SALES, U.S.A.,
12 INC.

13
14 Dated: February 28, 2006

15 _____/s/
16 Mark F. Anderson
17 Attorneys for Plaintiff
18 MARK R. CIABATTARI

19
20 Dated: February 23, 2006

21 _____/s/
22 Ralph W. Robinson
23 Attorneys for Defendant
24 GOODYEAR DUNLOP TIRES
25 NORTH AMERICA, LTD., LLC,

26
27 PURSUANT TO STIPULATION, IT IS SO ORDERED.

28 Dated: _____ 3/6 _____, 2006

United States _____ Judge
